T-Mobile®

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Via Electronic Filing

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Re: Written Ex Parte Communication
Wireless Termination Tariffs, CC Docket No. 01-92

Gentlemen:

T-Mobile USA, Inc. responds to the recent incorrect assertion by John Staurulakis, Inc. ("JSI") that one-sided wireless termination tariffs, with terms unilaterally set by incumbent rural local exchange carriers ("RLECs"), are a "lawful" procedure under federal law.[1]

It is not surprising the JSI cites no federal authority for its assertion that wireless termination tariffs are lawful. This is because the Commission and every federal court that T-Mobile is aware of has ruled that mandatory, "default" tariffs of the sort at issue here are unlawful.[2] The Commission could not have made its position more unequivocal when it ruled that LEC "tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection."[3] To hold otherwise, the FCC later explained, "would mean that, when an impasse is reached, the landline company could proceed unilaterally to file its tariffs, thereby rendering meaningless the negotiations already conducted on this matter."[4]

JSI encourages this Commission to follow the decision in *Sprint Spectrum* v. *Missouri Comm'n,* 112 S.W.3d 20 (Mo. Ct. App. 2003), an opinion that ignored relevant FCC and federal

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1 *See* Letter from John Kuykendall, JSI Director – Regulatory Affairs, to Marlene H. Dortch, FCC Secretary, CC Docket No. 01-92 (Oct. 27, 2004).

2 *See* T-Mobile *Ex Parte* Letter, CC Docket No. 01-92, at 2-8 (July 8, 2004). *See also* T-Mobile *Ex Parte* Letter, CC Docket No. 01-92 (Oct. 1, 2004).

3 *Radio Common Carrier Declaratory Ruling*, 2 FCC Rcd 2910, 2916 ¶ 56 (1987). *See also Second CMRS Order,* 9 FCC Rcd 1411, 1497 ¶ 229 (1994).

4 *Radio Common Carrier Reconsideration Order*, 4 FCC Rcd 2369, 2370-71 ¶ 14 (1989).

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court precedent.[5] T-Mobile has previously pointed out the factual and legal errors in this state court decision,[6] yet JSI has made no attempt to explain away these errors.

JSI asserts that RLECs need to file tariffs because they "cannot request negotiation" of wireless carriers, resulting in an "asymmetry of obligations & rights." This is nonsense. The FCC has explicitly "allowed LECs to negotiate the terms and conditions of interconnection with cellular carriers" and has "required these negotiations to be conducted in good faith."[7]

JSI additionally asserts that RLECs need to file tariffs because there is no procedure to resolve disputes. This, too, is nonsense. If negotiations are unsuccessful, an ILEC can either seek arbitration under Section 252 or file a complaint with the FCC.[8]

JSI finally asserts that RLECs need to file tariffs so as to provide "an incentive for the wireless carriers to negotiate with RLECs." Once again, this is utter nonsense. Consider the situation in Missouri, where T-Mobile is now in litigation with several RLECs with tariffs on file. T-Mobile specifically attempted to negotiate with these RLECs, but no agreement could be reached. Why was no agreement possible? Because they would rather attempt to recover the 15 cent ($0.15) rate in their state tariffs (vs. $0.021 in the interstate access tariff) than negotiate in good faith with T-Mobile.[9]

In the end, the RLECs claim the right to exempt themselves from federal law requirements by filing unilateral state tariffs in direct contravention of Commission and court precedent that hold this practice unlawful.[10]

The way to resolve the growing controversy between RLECs and wireless carriers is, as T-Mobile has previously recommended,[11] for the Commission to confirm that (a) "opt in" interconnection tariffs that comply with the cost-based reciprocal compensation provisions of the Act are consistent with federal law; and (b) any LEC, including an RLEC, can request a wireless carrier to commence interconnection negotiations.

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5 This same Missouri court recently expanded its *Sprint* decision, holding both that tariffs are a lawful procedure, and that RLECs can exempt themselves from federal law requirements simply by filing state tariffs (*e.g.*, may charge access rates for intraMTA traffic). *See Alma Telephone* v. *Missouri Comm'n*, WD 62961, 2004 Mo. App. LEXIS 1450 (Oct. 5, 2004).

6 *See* T-Mobile *Ex Parte* Letter, CC Docket No. 01-92, at 8-9 (July 8, 2004).

7 *Second CMRS Order*, 9 FCC Rcd 1411, 1497 ¶ 229 (1994)

8 *See Radio Common Carrier Reconsideration Order*, 4 FCC Rcd at 2371 ¶ 15 ("Should negotiations reach an impasse, and informal meetings fail, allegations regarding compliance with our good faith negotiation policy may be brought before the Commission pursuant to Section 208.").

9 T-Mobile has reached agreement with three Missouri RLECs because they were willing to negotiate in good faith and depart from the terms in their tariff. In contrast, most Missouri RLECs have chosen to stick with their tariffed terms.

10 *See TSR Wireless* v. *U S WEST*, 15 FCC Rcd 11166, 11182-83 ¶¶ 27-29 (2000), *aff'd Qwest* v. *FCC*, 252 F.3d 462 (D.C. Cir. 2001).

11 *See* T-Mobile *Ex Parte* Letter, CC Docket No. 01-92, at 1 and 16 (July 8, 2004).

Pursuant to Section 1.1206(b)(1) of the Commission's rules, one copy of this letter is being filed with the Secretary's office for filing in CC Docket No. 01-92.

Respectfully submitted,

/s/ Harold Salters

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